Filed 5/9/19 In re G.M. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re G.M., a Person Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. I.S., Defendant and Appellant.	E071778 (Super.Ct.No. J218557) OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County Counsel, for Plaintiff and Respondent.

Appellant I.S. (mother) appeals from the juvenile court's summary denial of her Welfare and Institutions Code[1] section 388 petition regarding her daughter, G.M. (the child). We affirm.

PROCEDURAL BACKGROUND

On September 21, 2007, the child, who was three years old at the time, was found wandering unattended at 7:00 a.m. When the Bakersfield Police Department contacted the child's father (father)[2] he admitted to drinking a 24-ounce can of beer at 7:30 a.m. that morning. Father said that the child's mother (mother) was living in San Bernardino, and he had very little contact with her. A section 300 petition was filed on September 24, 2007, alleging that the child came within the provisions of subdivision (b) of section 300 because of father's failure to adequately supervise her. A juvenile court in Kern County detained the child from father on September 25, 2007.

On October 23, 2007, the Kern County Juvenile Court sustained the section 300 petition.

At the disposition hearing on November 29, 2007, the Kern County Juvenile Court declared the child a dependent of the court and removed her from father's physical custody and ordered reunification services. It then placed the child with mother on

[1] All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

[2] Father is not a party to this appeal. As such, this opinion will only focus on mother.

family maintenance and ordered the matter transferred to San Bernardino County, where she resided.

On December 18, 2007, the San Bernardino County Juvenile Court accepted the transfer from Kern County and ordered the child maintained with mother.

On January 15, 2008, a social worker from the San Bernardino County Children and Family Services (CFS) filed an appearance review report, recommending that mother continue to participate in family maintenance services. Mother and the child were residing with the maternal grandparents. The social worker reported that mother was a young mother, who appeared to have learned from her past mistakes.

In January 2008, mother reported that she began drinking alcohol at the age of 12, and her drinking resulted in blackout periods. On February 13, 2008, she entered residential treatment at the Maple House Program (the program), although she was resistant to treatment. On April 14, 2008, she was incarcerated for failure to appear on a driving under the influence charge she had received before entering the program. She was released the next day and went back to the program. The court ordered her to remain there for six months.

On May 20, 2008, a petition was filed pursuant to sections 342 and 387, alleging that the child came within the provisions of section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The petition included the allegations that mother had a history of substance and alcohol abuse, and she could not provide adequate residence for the child since she had been admitted to the program. However, the petition

also alleged that mother was terminated from the program on May 16, 2008. She had 14 write-ups for disrespecting and cursing out the program staff and other residents.

At a hearing on May 21, 2008, the court found that the previous disposition had not been effective and that a prima facie case had been established for detention out of the home. The court detained the child with the maternal grandmother (the MGM).

The court held a jurisdiction/disposition hearing on June 11, 2008. The court sustained the section 387 petition, ordered the child to continue as a dependent, and ordered mother to participate in reunification services.

By September 2008, mother was residing in another inpatient program. She subsequently completed the program, as well as parenting classes, anger management classes, relapse prevention, and counseling. The social worker reported that the court approved unsupervised visitation on the weekends for a few hours, and the visits had gone well.

The court held a 12-month status review hearing on December 11, 2008, and continued mother's services for another six months. Less than one month later, mother relapsed on methamphetamine and was terminated from her sober living facility.

The social worker filed an 18-month status review report on March 5, 2009, recommending that the court terminate services and set a section 366.26 hearing. The social worker reported that the child had been in the care of the MGM since May 2008 and had adjusted well to the family. She was doing very well in the home and was comfortable there. The social worker also reported that mother "has been roaming

around San Bernardino County," and was not in contact with CFS. However, mother was reportedly having supervised visits with the child at the MGM's home once a week.

The court held an 18-month review hearing on April 28, 2009. It terminated reunification services, ordered CFS to initiate guardianship proceedings, and set a section 366.26 hearing.

The social worker filed a section 366.26 report on August 11, 2009, recommending that the court appoint the MGM as the child's legal guardian and the dependency be dismissed. The MGM had recently moved into a five-bedroom house with her family, she had maintained the same full-time job for the past 10 years, and she was described as very loving. The social worker opined that the MGM was the best candidate to care for the child, since the child would "have the best of both worlds as she [would] remain in a stable and loving home with the opportunity to share precious time with her mother."

On August 26, 2009, the court followed the recommendation, ordered the permanent plan to be guardianship, and terminated the dependency. The court stated that continued visits would benefit the child and ordered supervised visitation at least once a week.

Over nine years later, on October 30, 2018, mother filed a section 388 petition requesting the court to reinstate the dependency and order the child returned to her, under a plan of family maintenance. In the alternative, she requested her reunification services to be reinstated, and unsupervised overnight, weekend visits. As to changed circumstances, mother alleged that she had been employed as an in-home support

provider for the past five months and had lived with her client for the last four months. She also alleged she had been sober for two years, recently enrolled in a parenting class, and continued to have a positive relationship with the child. In an attached personal declaration, mother stated she had visited the child regularly for many years, about two times a week. As to best interest of the child, mother simply referred to her declaration. Aside from explaining her current employment and living situation, the declaration stated that she had "not been able to test randomly" but was willing to do so now, and she had her employer's support to have the child live with them in his two-bedroom apartment. She acknowledged her past mistakes, and said she was "a better person today." She said she knew she could be a better parent, and she was committed to "making the wrongs right" and nurturing her daughter to grow "into an amazing adult." The court denied mother's petition without a hearing because the proposed change of order did not state new evidence or a change of circumstances and did not promote the best interest of the child.

ANALYSIS

The Court Properly Denied Mother's Section 388 Petition

Mother argues that the court erred in summarily denying her section 388 petition. She claims the court should have granted an evidentiary hearing since she made the requisite prima facie showing to trigger a hearing. We conclude the court properly denied her section 388 petition.

A. *Relevant Law*

"A juvenile court order may be changed, modified or set aside under section 388 if the petitioner establishes by a preponderance of the evidence that (1) new evidence or changed circumstances exist and (2) the proposed change would promote the best interests of the child. [Citation.] A parent need only make a prima facie showing of these elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent's request. [Citation.] [¶] However, if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the court need not order a hearing on the petition. [Citations.]" (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) In other words, the court need not order a hearing if the allegations of the petition do not make a prima facie showing of both elements. (*Ibid*.) The prima facie showing is made only where the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition. (*Ibid.*)

We note that mother engages in a lengthy academic discussion in arguing that this court should review the challenge to a summary denial of a section 388 petition de novo, since the issue is a question of law. However, courts have consistently held that the standard of review of a juvenile court's decision to deny a section 388 petition without a hearing is abuse of discretion. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1158; see *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

B. *The Court Properly Denied Mother's Petition*

The juvenile court did not abuse its discretion in denying mother's petition. Mother requested the court to return the child to her custody on family maintenance, or, in the alternative, reinstate her reunification services and liberalize her visitation. We acknowledge that the petition may have alleged changed circumstances; however, it failed to demonstrate that a changed order was in the best interests of the child. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 529.) We note that "[a]fter the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point 'the focus shifts to the needs of the child for permanency and stability' [citation], and in fact, there is a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interests of the child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*).) "[A] primary consideration in determining the child's best interests is the goal of assuring stability and continuity." (*Ibid.*)

For best interest of the child, mother's petition referred to her declaration. The declaration merely explained her current employment and living situation, stated that she had been sober for two years, that she had "not been able to test randomly" but was willing to do so now, and that she had her employer's support to have the child live with them in his apartment. She acknowledged her past mistakes, and said she was "a better

person today." Mother further said she was committed to "making the wrongs right" and nurturing her daughter to grow "into an amazing adult."

Mother's petition does not demonstrate how it would be the child's best interest to reinitiate the dependency proceedings and remove her from her secure placement, in order to live with a parent who had a long history of alcohol abuse and attempted rehabilitation. The child was placed with the MGM in May 2008, after mother was terminated from her residential treatment program. She adjusted quickly to her new home and established a bond with the MGM. By the time mother filed her petition, the child was 14 years old and had been living with the MGM for over 10 years. The MGM had provided a stable and loving home for the child, and mother had been able to visit the child and be involved in her activities. In her declaration, mother affirmed that she had visited the child regularly over the years, had daily phone calls with her, and spent quality time with her at the movies, shopping, and going out to eat. Mother's allegations did not establish that it was in the child's best interest to be returned to her, since she had been living in her current home for only four months. Moreover, she worked as an in-home support provider, so the residence belonged to her client, and she had only had this job for five months. Mother's circumstances did nothing to assure stability or continuity for the child. (*Stephanie M., supra, 7* Cal.4th at p. 317.)

We note mother's argument that her requested order "would have no impact on the child's permanency and stability," as the child had lived with the MGM for almost 11 years, and mother "had been an integral part of that arrangement." Mother's contention is confounding and appears to undercut her request to have the child placed back in her

custody, or be granted services with the eventual goal of reunification. The child had lived in the MGM's home for the majority of her life, and mother had been able to spend a lot of quality time with her through the years. As the social worker opined when she recommended legal guardianship with the MGM, the child would "have the best of both worlds as she [would] remain in a stable and loving home with the opportunity to share precious time with her mother." Mother's petition gave the court little reason to want to disturb the child's ideal living arrangement.

Furthermore, mother's statements in her declaration that she had "now dedicated [herself] to maintaining [her] sobriety and regaining custody of [her] daughter," that she was "a better person today" and knew she could be a better parent, and that she was "committed to making the wrongs right" and helping the child grow into an "amazing adult" were inconsequential. They were simply conclusory statements that were insufficient to meet her burden of making a prima facie case. (See *In re Edward H.* (1996) 43 Cal.App.4th 584, 593.)

We conclude that it was not an abuse of discretion for the court to deny mother a hearing on the section 388 petition. The allegations in her petition did not demonstrate how it would be in the child's best interest to be removed from her home of over 10 years and placed back into dependency. Accordingly, the court properly denied mother's section 388 petition.

DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.